UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL

Case No.	CV 20-7150 PSG (PJWx)	Date	February 2, 2021
Title	Jialu Wu v. iTalk Global Communications, Inc.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): **The Court GRANTS Defendant's motion to dismiss, which RENDERS MOOT Defendant's motion to compel arbitration and stay further proceedings**

Before the Court is a motion to dismiss or to compel arbitration and to stay further proceedings filed by Defendant iTalk Global Communications ("Defendant"). *See generally* Dkt. # 20 ("*Mot.*"). Plaintiffs Jialu Wu ("Wu") and He Song ("Song")[1] (collectively, "Plaintiffs") opposed, *see generally* Dkt. # 25 ("*Opp.*"), and Defendant replied, *see generally* Dkt. # 26 ("*Reply*"). The Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. After considering the moving, opposing, and reply papers, the Court **GRANTS** Defendant's motion to dismiss, which **RENDERS MOOT** Defendant's motion to compel arbitration and stay further proceedings.

I. Background

In this putative class action, Plaintiffs claim that, without clear warnings or affirmative consent, Defendant (1) enrolls its customers in subscription services that automatically renew and (2) fails to give its customers the ability to cancel such services online. *See First Amended Complaint*, Dkt. # 17 ("*FAC*"), ¶ 1.

Defendant, a Texas Limited Liability Company, offers internet, phone, and television equipment and services. *Id.* ¶¶ 12–13. On October 15, 2016, Wu purchased Defendant's iTalkBB Chinese TV, which connects to a television (similar to a cable box) and provides access to popular Chinese movies and television shows through Defendant's service. *See id.* ¶¶ 16–18,

[1] The parties erroneously referred to Plaintiff He Song as "Song He." *See Opp.* 10:2 n.1. The Court notes and uses his correct name here.

21. To access Defendant's service, Wu chose to pay a one-time, annual fee rather than a monthly payment plan. *Id.* ¶ 19, 22–23.

When Wu purchased this service, Defendant represented to him that he was signing up for a one-year promotional bundle service. *Id.* ¶ 23. Defendant did not inform Wu that his service would automatically renew. *See id.* ¶¶ 20, 25–34. However, one year later, Defendant charged Wu for another year of service, and has continued charging him annually without his affirmative consent. *Id.* ¶¶ 33–34.

As a result, Wu filed suit in the Los Angeles County Superior Court on behalf of himself and others similarly situated, alleging a single cause of action: violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq*. *See Complaint*, Dkt. # 1-2 ("*Compl.*"), ¶¶ 59–75. Defendant then removed the action to this Court under the Class Action Fairness Act of 2005 ("CAFA"). *See Notice of Removal*, Dkt. # 1 ("*NOR*"), ¶ 3.

Defendant then moved to compel arbitration and to stay further proceedings under the Federal Arbitration Act ("FAA"), arguing that, when Wu purchased Defendant's service, he agreed to Defendant's Terms and Conditions (the "Agreement"), under which he must individually arbitrate any claims against Defendant. *See October 21, 2020 Order Granting in Part and Denying in Part Defendant's Motion to Compel Arbitration*, Dkt. # 15 ("*Arbitration Order*"), at 2.

The Court granted in part and denied in part Defendant's motion. *See generally id.* Specifically, the Court compelled arbitration for all of Wu's claims for relief except his claim for a public injunction. *Id.* at 14.

Wu then filed the operative First Amended Complaint ("FAC"), which added Song as a Plaintiff. *See generally FAC*. Song alleges (1) that Defendant offers no option to cancel its services online, and (2) that he cancelled Defendant's service, but, after receiving confirmation of the cancellation, that same day, Defendant automatically enrolled him in another year of Defendant's service, which he was unable to cancel. *See id.* ¶¶ 45–53. The FAC seeks, among other things, restitution and injunctive relief. *Id.* ¶ 91, 20:21–26.

Defendant now moves to dismiss the FAC or to compel arbitration and stay further proceedings. *See generally Mot.* For the reasons provided below, the Court **GRANTS** Defendant's motion to dismiss, which **RENDERS MOOT** Defendant's motion to compel arbitration and stay further proceedings.

II. Legal Standard

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In assessing the adequacy of the complaint, the court must accept all pleaded facts as true and construe them in the light most favorable to the plaintiff. *See Turner v. City & Cty. of San Francisco*, 788 F.3d 1206, 1210 (9th Cir. 2015); *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). The court then determines whether the complaint "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* Accordingly, "for a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (internal quotation marks omitted).

III. Discussion

Defendant argues that Plaintiffs' UCL claims request equitable relief, and, therefore, fail as a matter of law because Plaintiffs have not established the inadequacy of legal remedies (i.e., damages). *Mot.* 7:14–26. Specifically, Defendant contends that, under the Ninth Circuit's recent decision in *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020), "[t]he availability of damages precludes Plaintiffs from establishing an inadequate remedy at law, which is a prerequisite to bringing an equitable claim under the UCL." *Id.* 7:22–24.

Plaintiffs counter that *Sonner* is distinguishable on four grounds. *Opp.* 13:20–25. The Court disagrees with Plaintiffs on each ground.

First, Plaintiffs argue that, "unlike the plaintiff in *Sonner*, Plaintiffs seek **both** restitution and injunctive relief." *Id.* 14:5–6. The Court finds that this distinction is irrelevant. The opinion in *Sonner* "derived its rule from broad[] principles of federal common law and the historical division between courts of law and equity," which do not "create an exception for injunctions as opposed to other forms of equitable relief." *See Adams v. Cole Haan, LLC*, No. Sacv 20-913 JVS (DFMx), 2020 WL 5648605, at *2 (C.D. Cal. Sept. 3, 2020). As such, "[t]he clear rule in [*Sonner*] [is] that plaintiffs must plead the inadequacy of legal remedies before requesting [any] equitable relief." *See id.*; *In re MacBook Keyboard Litig.*, No. 5:18-cv-02813-

EJD, 2020 WL 6047253, at *3 (N.D. Cal. Oct. 13, 2020) ("[N]othing about the Ninth Circuit's reasoning indicates that the decision is limited to claims for restitution."). *But see Gross v. Vilore Foods Co.*, No. 20cv0894 DMS (JLB), 2020 WL 6319131, at *3 (S.D. Cal. Oct. 28, 2020) (reaching opposite conclusion). As such, the Court rejects Plaintiffs' first argument.

Second, Plaintiffs argue that "the plaintiff in *Sonner* sought relief for past harm, rather than future harm." *Opp.* 14:16–17. In contrast, here, "Plaintiffs and members of the classes could continue to use Defendant's services in the future (and likely will), without any way of knowing whether Defendant is violating the [UCL]. As such, Plaintiffs and class members will continue to suffer harm as a result of Defendant's ongoing illegal conduct unless Defendant is enjoined." *Id.* 15:5–9. Therefore, they "seek injunctive relief on behalf of themselves, members of the classes, and the public in order to prevent Defendant from committing future violations of the ARL, which money simply cannot fully remedy." *Id.* 15:22–25. Again, the Court disagrees.

The Court considered and rejected a similar argument in *Adams*. *See* 2020 WL 5648605 at *3. There, the complaint alleged that

> Plaintiff was damaged in her purchase because Defendant's false reference price discounting scheme inflated the true market value of the shoes she purchased. *Plaintiff is susceptible to this reoccurring harm because she cannot be certain that Defendant has corrected this deceptive pricing scheme and she desires to shop at Cole Haan outlet stores in the future, assuming that she could determine whether she was receiving authentic Cole Haan products at a true bargain.* An injunction is the only form of relief which will guarantee Plaintiff and other consumers the appropriate assurances.

2020 WL 5648605 at *3 (emphasis added). The complaint also asserted that,

> [a]s a direct and proximate result of Defendant's misleading and false advertisements, Plaintiff and Class members have suffered injury in fact and have lost money. As such, Plaintiff requests that this Court order Defendant to restore this money to Plaintiff and all Class members, *and to enjoin Defendant from continuing these unfair practices in violation of the UCL in the future. Otherwise, Plaintiff, Class members, and the broader general public[] will be irreparably harmed and/or denied an effective and complete remedy*.

Id. (emphasis added).

Based on these allegations, the Court concluded that "[t]he problem for [the plaintiff] is that her complaint does not provide any allegations that explain why she will be *irreparably harmed* should the Court not grant equitable relief. . . . Indeed, the injury that [the plaintiff] alleges is 'lost money,' a form of harm for which legal damages does seem to be an adequate remedy." *Id.* (emphasis added). For these same reasons, Plaintiffs allegations fail here.

At bottom, the harm alleged by Plaintiffs is that Defendant charged them for services that they either did not want or did not agree to purchase. *See FAC* ¶ 43 ("Had Mr. Wu known that Defendant would enroll him in a program under which Defendant would automatically renew his purchase for a subsequent term and automatically charge the associated renewal fee, especially at an increased rate, . . . Mr. Wu would not have purchased the service."); *id.* ¶ 51 ("Mr. [Song] was ultimately charged $49.99 for a full year of service, even though it was his clear desire to have no further services of Defendant."). And like the plaintiff in *Adams*, Plaintiffs have not explained why their potential future monetary harm caused by Defendant—if they choose to continue using Defendant's services—will be irreparable. Indeed, lost money is the exact type of harm that money damages can adequately remedy, *see Adams*, 2020 WL 5648605 at *3, whether suffered in the past or potentially suffered in the future. Accordingly, the Court rejects Plaintiffs' second argument.

Third, similar to Plaintiffs' second argument, they contend that "an injunction is appropriate because Plaintiffs are suffering a continual injury." *Opp.* 15:26–27. Again, the Court disagrees.

The Northern District rejected a similar argument in *In re MacBook Keyboard*: "[Plaintiffs] argue that because Apple's repair program is deficient, their alleged injury is 'continuing' such that class members with faulty keyboard[s] 'seeking to be made whole in the future could only sue Apple repeatedly.' Plaintiffs do not explain why those consumers could not sufficiently be 'made whole' by monetary damages." 2020 WL 6047253 at *3. Here, too, Plaintiffs offer no persuasive reason why monetary relief cannot adequately remedy "continuing" monetary injuries. Therefore, the Court rejects Plaintiffs' third argument.

Fourth, Plaintiffs argue that, because they "assert a single cause of action under the UCL, which does not entitle Plaintiffs to any legal remedies against Defendant," they "have properly alleged no remedy at law." *Opp.* 16:26–27, 17:14–16. The Court disagrees.

In *Sonner*, the Ninth Circuit noted "that state law can neither broaden nor restrain a federal court's power to issue equitable relief." *Sonner*, 971 F.3d at 841. Plaintiffs' argument,

if accepted, violates this principle. Specifically, Plaintiffs' argument would allow state legislatures to empower federal courts to issue equitable relief—regardless of the type of harm suffered by the claimant or whether such harm could be remedied by money damages—so long as the claimant sues under a state statute that only permits equitable relief. Because Plaintiffs cite no authority adopting Plaintiffs' position, and because Plaintiffs' contention, if accepted, would impermissibly broaden the Court's power to grant equitable relief, the Court rejects Plaintiffs' fourth argument.

IV. Leave to Amend

Whether to grant leave to amend rests in the sound discretion of the trial court. *See Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). Courts consider whether leave to amend would cause undue delay or prejudice to the opposing party, and whether granting leave to amend would be futile. *See Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 355 (9th Cir. 1996). Generally, dismissal without leave to amend is improper "unless it is clear that the complaint could not be saved by any amendment." *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003).

Here, the Court has rejected each of Plaintiffs' theories regarding why they lack adequate remedies at law. Because Plaintiffs could not allege any facts to change this outcome, the Court **DENIES** leave to amend as futile. *See id.*

V. Conclusion

The Court **GRANTS** Defendant's motion to dismiss the FAC without leave to amend because Plaintiffs have not, and cannot, show that they lack an adequate remedy at law. This order closes the case.

IT IS SO ORDERED.